IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Habeas Corpus Petition No. 21 of 2005

Smt. Anita through her husband Karnel Singh
S/o Sri Nihaal Singh,
R/o Bullawala, Doiwala,
Dehradun, Uttararanchal. …….. Petitioner

Versus

1. State of Uttaranchal
through Home Secretary,
Government of Uttaranchal,
Dehradun.
2. The District Magistrate,
Dehradun.
3. The Sub-Divisional Magistrate,
Sadar, Dehradun.
4. The Station House Officer,
Police Station, Doiwala,
District Dehradun.
5. The Superintendent,
Nari Niketan,
Kedarpuram, Dehradun. ……. Respondents

Mr. Deep Joshi, Advocate for the petitioner.
Mr. D.K. Sharma, Government Advocate for the State of Uttaranchal.

JUDGMENT

Coram: **Hon. Cyriac Joseph, C.J.**
Hon. P.C. Pant, J.

CYRIAC JOSEPH, C.J. (Oral)

1. In the light of the order passed earlier today by this Court, Mr. Dhyan Singh, father of Smt. Anita has filed an affidavit. The affidavit is taken on record.

2. We have perused the affidavit and in view of the averments contained in the affidavit, the deponent is allowed to take his minor daughter Anita with him and to keep her in his custody and care as stated in the affidavit.

3. The petition stands dispose of in the above terms.

(P.C.Pant, J.) **(Cyriac Joseph, C.J.)**
01.12.2005 **01.12.2005**

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1. State of Uttaranchal
   through Home Secretary,
   Govt. of Uttaranchal, Dehradun.
2. The District Magistrate,
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   Police Station Doiwala,
   District Dehradun.
5. The Superintendent, Nari Niketan,
   Kedarpuram, Dehradun. ……. Respondents

Mr. Deep Joshi, Advocate for the petitioner.
Mr. D.K. Sharma, Government Advocate for the State of Uttaranchal.

Hon. Cyriac Joseph, C.J.
Hon. P.C. Pant, J.

In compliance with this Court's order dated 29.11.2005, the detenue Smt. Anita has been produced before the Court. We have talked to Smt. Anita separately and also in the presence of Karnel Singh. We have also talked to the father of Smt. Anita.

Mr. D.K. Sharma, Government Advocate has produced a duplicate of the School Leaving Certificate of Smt. Anita. It is issued by the Head Mistress of the Government Primary School, Bullawal. As per the School Leaving Certificate, the date of birth of Smt. Anita is 12.03.1989. Mr. D.K. Sharma has also produced a separate certificate dated 23.11.2005 issued by the said Head Mistress. In the said certificate also, it is stated that the date of birth of Smt. Anita, as per the School records, is 12.03.1989. The above-mentioned School Leaving Certificate and the certificate dated 23.11.2005 issued by the Head Mistress of the School are taken on record.

Though Karnel Singh and Smt. Anita claimed that Anita is aged 18 years and hence a major, there is no material to support the claim. We have no reason to disbelieve or ignore the entries in the School Leaving Certificate and the certificate issued by the Head Mistress of the School and produced by the Government Advocate. In view of the said certificates, the Court has to proceed on the basis that the date of birth of Smt. Anita is 12.03.1989. It means that she is still a minor. It also implies that the marriage stated to have been performed and registered on 20.10.2005 is invalid.

We have ascertained from Smt. Anita whether she had any sexual relationship with Karnel Singh. She categorically stated that she had no sexual relationship with Karnel Singh and that the above fact is corroborated by the result of the medical examination conducted on her on the direction of the Sub-Divisional Magistrate. Mr. Karnel Singh also has no case that he and Smt. Anita had lived as husband and wife.

Though Smt. Anita expressed the desire to go with Karnel Singh, we explained to her that, being a minor, she cannot be allowed to go with Karnel Singh and live with him, till she attains majority. We also explained to her that the marriage stated to have been performed and registered on 20.10.2005 is invalid and therefore, she cannot be treated as the legally wedded wife of Karnel Singh. In view of the willingness shown by the father of Smt. Anita to file an affidavit in this Court undertaking to keep Smt. Anita in his custody and care till she attains the age of 18 years and to allow her to choose her partner in life according to her wishes after she completes 18 years of age, we consider it proper and necessary to allow the father of Smt. Anita to take her along with him. In our view, the above course would be in the best interest of the minor girl Anita.

Hence, if Mr. Dhyan Singh, father of Smt. Anita files an affidavit undertaking to keep Smt. Anita in his custody and care till she attains the age of 18 years and to allow her to choose her partner in life according to her wishes after attaining the age of 18 yeas and

also undertaking that he or other family members will not compel or pressurise Smt. Anita to marry any other person against her will and that she will not be physically or mentally tortured during the period of her custody with the father, the said Dhyan Singh will be allowed to take Smt. Anita with him.

The case will be taken up again at 4:00 p.m. to enable Mr. Dhyan Singh to file an affidavit as stated above.

(P.C. Pant, J.) **(Cyriac Joseph, C.J.)**
01.12.2005 **01.12.2005**

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